CIRMA ANNUAL MEETING

JANUARY 31, 2025

SELECTED DECISIONS

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Cardoza v City of Waterbury, 224Conn App 813 (2024)

—In May 2019, plaintiff was traveling on a public street in the City of Waterbury, when she encountered a patch of broken pavement that caused damage to both tires, and resulted in personal injuries to the plaintiff
— plaintiff sued the City pursuant to the Defective Highway Act
— in the plaintiffs notice of intent to sue, Plaintiff identified the date and time of the incident, the location of the incident, a general description of the injuries received, including the property damage to the vehicle, but regarding the nature of the defect, the plaintiff simply stated “the above injuries and losses were caused by the defect in the roadway described above.” There was no such description of the defect in the road.
—-the City moved to dismiss, and the court granted the City’s motion. The Appellate Court has now affirmed the granting of this motion to dismiss.
—-compliance with the 90-day notice requirement is jurisdictional, so a motion to dismiss can be filed if one of the prerequisites is not present
— the Appellate Court noted that the notice of intent to sue must include written notice of the injury, general description of the injury, the cause of injury (the defect), the time and date of the injury, and the location of the injury.
— a savings clause exists that will allow a defective notice to survive a motion to dismiss so long as an attempt to comply with the notice requirement was made, and that attempt does not “patently“ fail to provide the necessary information
— the savings clause will save a notice that has incorrect information (not patently defective), so long as there was no intent to mislead by the plaintiff, or the town was not actually mislead
— the Appellate Court noted that when there is no attempt to provide detail regarding the cause of the injury, meaning the defect in the road, the notice is patently defective, and it cannot be saved by the savings clause
— the dismissal of the claim as to the city was affirmed

Bard v City of Middletown (Middlesex Superior Court 2024)

--plaintiff was working on a project that required resurfacing and installation of guard rail on a City Road

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— plaintiff arrived at the worksite, and got out of his vehicle to assist in the off-loading of a piece of heavy equipment needed to perform the day's work
— after taking a few steps on the job site, plaintiff stepped into a hole that had been dug for installation of guard rail adjacent to the area planned for the roadway
—-plaintiff suffered personal injuries and brought suit pursuant to the Defective Highway Act
—-the flaw in plaintiff's case was that he was not using the subject, road for travel, as a traveler. He was there to perform employment, and nothing more.
— the City moved for summary judgment as to the defective highway claim, and the court granted the City's motion.
— the court noted that the statutory right of action is given only to a traveler on a road or sidewalk that is alleged to be defective; a person must be on the highway for a legitimate purpose, connected with travel in order to obtain the protection of the statute
— Plaintiffs allegation that he was a traveler because he was walking to get to a certain part of the job site does not bring him within the protection of the statute. The movement of a plaintiff has to be connected to an intention to get from one place to another, as a traveler, in order to bring a claim under 13a-149 for a defect in the roadway
— the court noted that an additional reason existed for denying plaintiff relief under the defective highway act. The place where plaintiff fell was not part of the proposed travel path of the road; plaintiff was not walking on the roadway or sidewalk when he fell, and the post hole was in an area undergoing construction and paving, it was not open to the public, and there was no expectation the public would travel on the subject area while it was undergoing construction.
— accordingly, there was no basis for any recovery pursuant to the defective highway act, and the city entitled to summary judgment

Hohorst v Easton (Superior Court Bridgeport 2024)

— in September 2018, a heavy rainstorm hit Fairfield County, and several inches of rain hit the watershed that included the plaintiffs property
— the catch basins and drainage system in the area of plaintiffs home were overwhelmed and resulted in overland flooding on to plaintiffs property
— in addition, part of the storm drain system was clogged with debris that had entered the system as the heavy rain washed all loose materials into the storm drain
— plaintiffs home suffered property damage as a result of the flood conditions
— plaintiff sued for negligence and nuisance
— as to the negligence claim, the court noted that inspection and maintenance of storm

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drainage systems, involve judgment and discretion absent some mandatory directive in a local policy
— the court noted there was no local charter provision, ordinance, regulation, rule, policy, or any other directive prescribing the manner in which the Town should have designed, constructed, inspected, maintained, and repaired the storm system
— the court noted that the discretionary determination regarding maintenance of drainage systems includes the determination to engage in no maintenance at all
— plaintiff argued that because the town had an easement to install a storm water drainage system, that carried with it a mandatory duty to maintain any system created by it in an exercise of its easement rights. The court rejected this argument given that the existence of the easement simply gave the right of the Town to construct the drainage system, and to enter onto the land to maintain it, should it elect to do so. There was no mandate to do anything specific regarding maintenance or inspection so there was immunity for the negligence claim.
— regarding the nuisance claim, the court noted that an essential element of a nuisance claim is that the dangerous condition be created by the positive act of the municipality, not by inaction.
— the court further noted that if the conduct of the town was grounded in inaction negligence, and governmental immunity would apply
— finally, to the extent, the plaintiff claimed that the initial design and construction of the drainage system, with under-sized pipes to carry expected peak flows, was a positive act that created a dangerous condition, that would be barred by the two-year negligence statute of limitations, CGS 52–584 and three year intentional tort statute of limitations, CGS 52–577
— summary judgment was granted on all count

Abubakari v Schenker(Hamden Public Schools) (New Haven Superior Court 2024)

— plaintiff is a parent of a student in the Hamden School system
—Plaintiff was unhappy with the services provided by the school system, and decided to pull her child/student from the school system and provide homeschooling
— plaintiff did not follow proper protocols for establishing home schooling of her child, and ignored all contacts from the school system regarding status of the student
— after roughly 30 days of having no confirmation as to what the students schooling status was, the defendant/school social worker filed a complaint to the Connecticut Department of Children and Families, as a mandated reporter

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—DCF opened the case, filed a petition for neglect, and ultimately withdrew its petition after about five months, after it became satisfied that the student was being properly educated.
— plaintiff filed suit for intentional infliction of emotional distress, claiming the filing of the complaint to DCF was malicious
— defendant, filed for summary judgment, claiming the immunity provided in the mandated reporter Statute, CGS 17a-101e.
—CGS 17a-101e provides that any person, institution or agency, which, in good faith, makes a report pursuant to [the mandated reporter requirements]…shall be immune from any liability, civil or criminal, related to the actions taken in response to the mandated reporting
— the court noted that good faith is "that state of mind, denoting honesty of purpose, freedom, from intention to defraud, and generally speaking means being faithful to one's duty or obligation"
— the court further noted that if there was reasonable cause to suspect neglect, then, by definition, a report would have been made in good faith, and the immunity would apply
— the Court noted that the fact that the parent stopped all communication with the school after signing her child out of school that day was reasonable cause to suspect child neglect once it had been nearly 30 days since the school district had any information as to the student, and the parent never took steps to formally withdraw the student from school in favor of homeschooling.
— the court further noted that an essential element of the tort of intentional infliction of emotional distress is extreme and outrageous conduct beyond the bounds of civilized society; and, given the fact there is a statutory obligation on the part of parents to have their children educated, once the school district, lost our connection with the student for a near 30 day period, as a matter of law a report to DCF would not be considered extreme in outrageous conduct
— summary judgment entered for the defendant school social worker.

CARMEN SUAREZ-COLON V. TOWN OF EAST HARTFORD/BOE (HARTFORD SUPERIOR COURT 2024)

- Plaintiff, a step-parent of student at East Hartford High School, attended outside event at East Hartford High School to pick up laptop for student to use for remote learning during the school year due to COVID
- The Plaintiff filed suit against the Defendants claiming that they are liable for negligence in that while picking up the laptop, a tent pole fell on her arm causing injuries

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- Defendants filed MSJ arguing that they were entitled to governmental immunity because the inspection and maintenance of the subject tent at the High School involves discretionary rather than ministerial acts, and the plaintiff was not an identifiable victim subject to imminent harm
- In support of the motion, the Defendants submitted an affidavit by the Director of Facilities for EH public schools that there are no written policies or directives that mandate the specific manner in which outdoor events were to be supervised at EH High School, nor written policies or directives that mandated the specific manner in which officials were to inspect and maintain erected tents during school events
- The District also provided evidence that no complaints or concerns regarding lack of supervision at the school or safety of tents erected outside of the high school
- The plaintiff, in an attempt to show that there was a ministerial duty here, presented (1) a press release from Governor Lamont regarding "guiding principles" of safety during COVID-19 in schools, and (2) a communication from the superintendent of schools that stated the core functions of the Department of Facilities, including daily cleaning, maintenance, and repair. The Court held that nothing in these imposes any duty as to the manner in which inspection, maintenance, and supervision of tents erected on school grounds must be conducted and just shows the job responsibilities of the department. The Court held that the plaintiff failed to identify any statute, ordinance, policy, or other directive that set forth a clear policy with regard to inspection, maintenance, or supervision of the tents erected on school grounds.
- The Court held that the inspection and maintenance of the tent in question was left entirely to the discretion of the town's employees.
- The Defendants further argued that the identifiable person-imminent harm exception to governmental immunity does not apply, which the Court agreed.
- In an attempt to prove that the exception to GI applied, plaintiff claimed that she was identifiable because she was invited to the school to pick up the computer
- The Court disagreed, stating that the plaintiff is only identifiable if she was compelled to be on the school grounds and thus fell into the foreseeable class of victims element to proving that she was identifiable. The Court highlighted that only schoolchildren compelled to be on school grounds during school hours fall into this exception and the plaintiff was voluntarily on the presence of school grounds.
- The Court held that as she could not prove that she was identifiable, she would not be able to satisfy the identifiable person-imminent harm exception to governmental immunity.
- The Court granted Defendants' motion for summary judgment in its entirety pursuant to governmental immunity to which no exception applies.

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Fichera v West Hartford 2024WL 2076141(2024)

Plaintiff was at the town pool when she tripped over a piece of pool maintenance equipment on the pool deck and was injured. Plaintiff sued for negligence, and the town raised governmental immunity, and moved for summary judgment.

Court noted that inspection and maintenance is discretionary and in order for it to be ministerial plaintiff must point to a statute, city charter provision, ordinance regulation, rule, policy or other directive, that by its clear language, compels a municipal employee to act in a prescribed manner without the exercise of judgment or discretion.

Plaintiff raised the pecuniary exception, because a fee was normally charged to enter the pool, however, during Covid, the town waived all charges in allowed persons to enter. Without paying a fee. The court noted that even if the fee structure was still in place, the Town would be entitled to governmental immunity-- the operation of the town pool would not lose its governmental nature so long as the fee is insufficient to meet the activities expense.

Regarding the identifiable person, exception, the court held that the plaintive was not identifiable, as she was not visualized, as about to get hurt, and the exception as to, for seeable classes, would not apply to the plaintiff. It was not compelled to be present at the pool.

Mace v City of Norwalk

Plaintiff was injured when she fell, while walking at calf pasture, beach in Norwalk, due to an uneven surface of sidewalk, located in front of the pavilion, that houses the restrooms.

Plaintiff sued for negligence, and for defective highway.

City file for summary judgment, based on recreational use immunity, given that plaintiff was allowed onto the property, free of charge for recreational purposes.

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Plaintiff conceded she was not charged a fee to walk on the beach, however, she stated as a taxpayer, the exception should not apply to her because taxpayer funds were used to inspect and maintain and operate the beach facility.

The court rejected that as a requisite "fee charged" for use of recreational land that would defeat a claim of immunity under the recreational use immunity statute.

The issue also existed that plaintiff was not in fact, a taxpayer at the time she fell.

WATCH FOR UPCOMING DECISION ON POLICE DEADLY FORCE

Barnes v. Felix pending before the U. S. Supreme Court.

--will address the issue of whether the reasonableness of the use of deadly force should be judged by the circumstances/perceptions at the moment deadly force is deployed or based on the "totality of circumstances" which allows consideration wo whether the officer made a poor decision that caused the need for use of deadly force.

--Connecticut follows the 2d Circuit rule that judges reasonableness of force on the circumstances attendant at the moment deadly force is deployed.

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